



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 66

APPLICANT **BT**

APPLICANT **NS**

RESPONDENT **Q Ltd**

The Tribunal orders:

1. Q Ltd is to pay \$496.83 to BT and NS on or before 12 May 2023.
2. By virtue of the Slip Rule¹, on 26 April 2023 two amendments have been made to the order dated 16 March 2023:
 - (a) the amount awarded for the loss of the flowers has been amended to \$249.83 to include the GST (\$217.25 plus \$32.58); and
 - (b) the total to pay has been amended to \$406.83 (flowers \$249.83 plus [champagne] \$247.00); and
 - (c) the payment date has been amended to 12 May 2023.

Reasons:

3. This matter had previously been adjourned as further time was required.
4. In August 2021 BT and NS (“the applicants”) entered into a Wedding Agreement with Q Ltd (“the respondent”) for their wedding reception. BT and NS were dissatisfied with the service provided and are seeking \$4,979.75 in damages for:

(a) Loss of flowers	\$1,000.50
(b) Excessive charge on [champagne]	\$ 247.00
(c) Refund due to inadequate staffing service	\$ 240.00
(d) Extra photographers’ costs due to delays in schedule	\$ 350.00
(e) Compensation for emotional harm and loss of reputation	\$ 3,217.25
5. Q Ltd accepted liability for point 4(b) in the first hearing.
6. The issues I need to determine are:
 - (a) Was there an implied term in the Wedding Agreement that BT and NS’ wedding flowers would be kept for them to pick up the following morning?

¹ District Court Rules 2009: S1.15 Correction of accidental slip or omission

- (b) If so, what was the loss to BT and NS as a result of the flowers not being available?
- (c) Were there failures in the service provided at the reception as a result of Q Ltd not providing sufficient numbers of experienced staff on the night?
- (d) If so, what losses did BT and NS suffer?
- (e) Was the increase in the photographer's cost caused by failures in the service?
- (f) If so, what losses did BT and NS suffer?
- (g) Are BT and NS entitled to damages for emotional harm and loss of reputation as a result of the poor service they received?

7. Any applicant to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been discharged by a party I need to consider and evaluate the evidence presented to the Tribunal by the parties.
8. I would like to reassure the parties that all evidence presented to the Tribunal has been considered, but this order only refers to essential evidence material to the issues and is not intended to be a full record of the hearings or evidence presented.

Was there an implied term in the Wedding Agreement that BT and NS' wedding flowers would be kept for them to pick up the following morning?

9. The law of contract implies terms into a contract where the contract is silent or not clear. I find that it was an implied term of the contract that BT and NS' wedding flowers would be available for them to collect the morning after their wedding reception.
10. I have regard for the fact that at the time Q Ltd was packing up after the reception, the decision had been made that as the flowers were wilted and in a poor condition, they had no value and were put into the rubbish. However, the value to BT and NS lay in the opportunity to press and/or preserve the flowers as memorabilia of their special day. As the flowers were binned, they were denied any opportunity to do so.

If so, what was the loss to BT and NS as a result of the flowers not being available?

11. I carefully considered the evidence from the parties as to the state of the flowers at the end of the reception. BT and NS said the flowers had been carefully chosen, were freshly cut and some of them were just buds at the beginning of the day. They claimed, that based on the recommendation of their florist, the value of the flowers the next morning would be in the vicinity of 60% of their original cost of \$870.00.
12. However, after reviewing the coloured photographs of the reception tables, shot around 12 midnight, coupled with the evidence from Q Ltd and a witness, I am satisfied that 60% is excessive for the following reasons.
13. The vases in which the flowers were placed on the tables were not overly sturdy, some of which had tumbled during the reception and left the flowers without water.
14. There is clear evidence that some flowers had wilted and were bending over, albeit there are others which still held their pose.
15. In considering the compensation to be awarded for the loss of the flowers, I am mindful that the assessment of damages is not always an exact science, that a common-sense approach is required. The principle that guides the Tribunal in making calculations is that the applicant should

be placed in the same position as if the wrong had not been suffered. Whilst this principle is easy to state, it can be difficult to apply.

16. Calculating damages is therefore not an exact science and will frequently involve judgement as to what is reasonable in the circumstances. In addition, the Tribunal is required to make decisions based on the substantial merits and justice of the case. Therefore, the Tribunal needs to do what is fair and reasonable in the particular circumstances of each case. I find BT and NS are entitled to 25% of the total amount paid, which is \$217.25, for the loss of the flowers and their loss of opportunity to preserve them as memorabilia.

Were there failures in the service provided at the reception due to Q Ltd not providing sufficient experienced staff on the night?

17. I am satisfied on the balance of probabilities that Q Ltd's selection of staff (numbers and experience) was adequate for the occasion.
18. I accept there were some failures in the delivery of the services, for example two side dishes of rice could not be served, some serving plates were missing one or two slices of meat, however, I find that the standard did not fall below what any reasonable person would believe was reasonably acceptable.
19. Therefore, there is no need to address point 5(d).

Was the increase in the photographer's cost caused by failures by the service staff?

20. BT and NS are unable to prove to the required evidential standard that it was more likely than not, that due to Q Ltd's failure to keep within running schedule for the day, that BT and NS had to pay more than expected for the photographer's services.
21. Therefore, there is no need to address point 6(d).

Are BT and NS entitled to damages for emotional harm and loss of reputation as a result of the poor service they received?

22. Under section 10 the Disputes Tribunal Act 1988, the Tribunal has jurisdiction in respect of:
 - (a) a claim founded on contract or quasi-contract;
 - (b) a claim for a declaration that a person is not liable to another person in respect of a claim or demand, founded on contract or quasi-contract, made against that person by that other person; and,
 - (c) a claim in tort in respect of:
 - (i) the destruction or loss of any property;
 - (ii) any damage or injury to any property; and,
 - (iii) the recovery of any property.
23. This element of BT and NS' claim is founded on the tort of negligence that caused personal injury and emotional harm, and therefore outside of the Tribunal's jurisdiction.

Conclusion

24. An order is made for \$496.83 which is \$249.83 for the loss of the flowers and \$247.00 for the refund on the [champagne] which was agreed to by the parties.
25. This claim has been heard over two lengthy hearings, with evidence from several witnesses. I understand that BT and NS, and the staff at Q Ltd, have been looking forward to an outcome. I hope this now brings the matter to a close.

Referee:

Date: 26 April 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.